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Arizona Corporation Commission

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FEB 12 2007

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BEFORE THE ARIZONA CORPORATION COMMISSION

BRENT WEEKES,

DOCKET NO: W-03512A-07-0019

Petitioner,

ANSWER TO
COMPLAINT AND REQUEST FOR
INTERPRETATION OF PRIOR
DECISIONS OR REQUEST
APPLICATION FOR DELETION OF
TERRITORY FROM CERTIFICATE
OF CONVENIENCE AND NECESSITY
OF PINE WATER COMPANY, INC.

v.

PINE WATER COMPANY, INC., an
Arizona Corporation

Respondent.

Respondent Pine Water Company ("Pine Water" or "Respondent") hereby responds to and answers the January 12, 2007 Complaint and request for interpretation of prior Arizona Corporation Commission ("Commission") Decisions or, in the alternative, request to delete a portion of Pine Water's certificate of convenience and necessity ("CC&N") that is property of Brent Weekes ("Complainant"), hereinafter the "Development."

AFFIRMATIVE STATEMENT OF PERTINENT FACTS

1. The history of water supply problems and limitations on new service connections and main extensions in Pine Water's service area is well documented. See Commission Decision Nos. 56539 (July 12, 1989), 56654 (October 6, 1989), 57047 (August 22, 1990), 59753 (July 18, 1996), 60972 (June 19, 1998), 64400 (January 31, 2002), 65435 (December 9, 2002), 67166 (August 10, 2004), 67823 (May 5, 2005).

2. The Complaint requests a Commission Order interpreting Decision Nos.

1 65435 and 67823 to be consistent with Decision No. 64400, in which Pine Water's
2 moratoria were modified in part to permit main extensions so long as the owner of the
3 requesting property is able to provide an independent source of water.

4 3. The Complaint alternatively seeks approval from the Commission to delete
5 certain property from Pine Water's CC&N.

6 4. With regard to the modified moratoria referenced in Decision No. 64400,
7 including the moratorium on main extension agreements, Decision No. 65435 merely
8 states that the moratoria apply to the entirety of Pine Water's CC&N.

9 5. In Decision No. 67823, the Commission extended the complete moratorium
10 on new connections and main extensions first authorized in Decision No. 59753, in order
11 to "mitigate the potential detrimental effects associated with adding a significant number
12 of customers and/or high volume customers." Pine Water is currently subject to a total
13 moratorium, as ordered and later affirmed by the Commission, on all new residential and
14 commercial service connections within its CC&N, as well as on main line extensions.

15 6. On August 21, 2006, Pine Water declined Complainant's request for a main
16 line extension based on the moratorium established in Decision No. 67823. However, in
17 its October 25, 2006 Will Serve Letter (*see* Complaint Exhibit I), Pine Water indicated a
18 willingness to extend water utility service provided that sufficient water existed to serve
19 the Development, and provided the Commission approved the main extension and granted
20 a variance from the moratorium imposed by Decision No. 67823.

21 **RESPONSE TO ALLEGATIONS IN COMPLAINT**

22 7. Answering paragraph 1, Respondent lacks sufficient information to admit or
23 deny the allegations of this paragraph.

24 8. Answering paragraph 2, Respondent admits the allegation contained in
25 paragraph 2.
26

1 9. Answering paragraph 3, Respondent admits the allegation contained in
2 paragraph 3.

3 10. Answering paragraph 4, Respondent denies the allegations contained in
4 paragraph 4. However, Respondent does not challenge the jurisdiction of the Commission
5 to adjudicate this matter.

6 11. Answering paragraph 5, Respondent states that the decisions of the
7 Commission speak for themselves and say what they say. No further response should be
8 required, however, Respondent affirmatively avers that Decision No. 64400 was issued on
9 January 31, 2002 and has been superseded by subsequent Commission decisions.

10 12. Answering paragraph 6, Respondent asserts the Commission's order that
11 "new service connections main [sic] line extensions is hereby approved. . ." speaks for
12 itself. No further response should be required.

13 13. Answering paragraph 7, Respondent asserts that the Arizona Corporation
14 Commission Utilities Division Staff's ("Staff") recommendations contained in Decision
15 No. 64400 speak for themselves. No further response should be required.

16 14. Answering paragraph 8, Respondent asserts that the Ordering Paragraph
17 Complainant references, contained in Decision No. 64400, speaks for itself. No further
18 response should be required.

19 15. Answering paragraph 9, Respondent admits the allegation contained in
20 paragraph 9.

21 16. Answering paragraph 10, Respondent asserts that the recommendations of
22 Staff contained in Decision No. 65435, referenced by Complainant, speak for themselves.
23 No further response should be required.

24 17. Answering paragraph 11, Respondent asserts that the Ordering Paragraph
25 Complainant references, contained in Decision No. 65435, speaks for itself. No further
26 response should be required.

1 18. Answering paragraph 12, Respondent admits the allegation contained in
2 paragraph 12.

3 19. Answering paragraph 13, Respondent affirmatively avers that paragraph
4 number 26 on page 11, lines 2-7, of Decision No. 67823 is a conclusion of the
5 Commission and not an explicit recommendation by Staff. Respondent further asserts that
6 paragraph 26 of Decision No. 67823 speaks for itself. No further response should be
7 required.

8 20. Answering paragraph 14, Respondent asserts that the Ordering Paragraphs
9 Complainant references, contained in Decision No. 67823, speak for themselves. No
10 further response should be required.

11 21. Answering paragraph 15, Respondent admits the allegation contained in
12 paragraph 15.

13 22. Answering paragraph 16, Respondent denies the allegation contained in
14 paragraph 16. Finding of Fact No. 14 contained in Decision No. 67823 states "Staff
15 continues to recommend that a total moratorium on new connections should be imposed
16 due to the lack of available water resources to Pine Water." Furthermore, Ordering
17 Paragraph number 5, page 13 Ins. 14-16, of Decision No. 67823 states that "a total
18 moratorium on main extension agreements and commercial connections shall continue to
19 be in effect. . ."

20 23. Answering paragraph 17, Respondent asserts that Complainant's
21 November 21, 2005 letter to Brad Morton speaks for itself. No further response should be
22 required.

23 24. Answering paragraph 18, Respondent asserts that the November 22, 2005
24 e-mail to Complainant from Brad Morton speaks for itself. No further response should be
25 required.

26 25. Answering paragraph 19, Respondent asserts that Complainant's August 9,

1 2006 letter to Respondent speaks for itself. No further response should be required.

2 26. Answering paragraph 20, Respondent admits the allegation contained in
3 paragraph 20.

4 27. Answering paragraph 21, Respondent lacks knowledge or information
5 sufficient to form a belief as to the truth of the allegation that Complainant proposed a
6 suitable well site. This is largely due to Complainant's failure to follow the process of
7 obtaining an extension of service from Pine Water suggested by Respondent, a process
8 Pine Water affirmatively alleges is consistent with Commission orders and its rules and
9 regulations. Respondent additionally asserts that the Well Development Design
10 Memorandum Project No. 6257-0001 speaks for itself. No further response should be
11 required.

12 28. Answering paragraph 22, Respondent admits the allegation contained in
13 paragraph 22.

14 29. Answering paragraph 23, Respondent asserts the provision in the Addendum
15 that Complainant references speaks for itself. No further response should be required.

16 30. Answering paragraph 24, Respondent denies the allegation contained in
17 paragraph 24.

18 31. Answering paragraph 25, Respondent denies the allegation contained in
19 paragraph 25. Respondent, although unable to guarantee utility service, did not outright
20 deny Complainant's request, it suggested a means by which service could be extended and
21 agreed to work cooperatively with Complainant.

22 32. Answering paragraph 26, Respondent states that Brad Morton's
23 September 19, 2006 letter speaks for itself. No further response should be required.

24 33. Answering paragraph 27, Respondent admits that a will serve letter was
25 provided on October 25, 2006. That letter speaks for itself. As such, Respondent denies
26 the remainder of the allegation contained in paragraph 27 because Complainant has

1 attempted to characterize the letter in a manner that is not consistent with its expressed
2 content. Respondent further asserts that the Will Serve Letter outlined the process for
3 obtaining an extension of water utility service and offered Respondent's future support of
4 Complainant should Complainant request a variance to the moratorium.

5 34. Answering paragraph 28, Respondent affirmatively avers that Brad Morton
6 is Public Utilities Consumer Analyst II, not Utilities Division Director. Respondent lacks
7 knowledge or information sufficient to form a belief as to the truth of the remainder of the
8 allegation contained in paragraph 28. However, Respondent asserts, upon its own
9 information and belief, that Staff agrees that (1) Pine Water is subject to a total
10 moratorium on new service connections pursuant to Decision No. 67823; and (2) Staff
11 believes the appropriate way for a new applicant for service to obtain service is to seek a
12 variance from the Commission.

13 35. Answering paragraph 29, Respondent affirmatively avers that
14 Complainant's letter to Respondent was dated December 8, 2006. Respondent denies the
15 remainder of the allegations contained in paragraph 29.

16 36. Answering paragraph 30, Respondent incorporates by this reference its
17 responses to paragraphs 1-29 of the Complaint.

18 37. Answering paragraph 31, Respondent asserts that to the extent Complainant
19 is stating a legal conclusion, no response is necessary. To the extent a response is
20 required, Respondent denies the allegations in paragraph 31.

21 38. Answering paragraph 32, Respondent asserts that to the extent Complainant
22 is stating a legal conclusion, no response is necessary. To the extent a response is
23 necessary, Respondent denies the allegation contained in paragraph 32.

24 39. Answering paragraph 33, Respondent lacks knowledge or information
25 sufficient to form a belief as to the truth of the allegation contained in paragraph 33, and
26 therefore, denies such allegations.

1 40. Answering paragraph 34, Respondent asserts that to the extent Complainant
2 is stating a legal conclusion, no response is necessary. To the extent a response is
3 necessary, Respondent admits that it can issue a will serve letter, and it has, and enter into
4 a main extension agreement with Complainant; however, that agreement would be subject
5 to approval pursuant to AAC R14-2-406 and any extension of service would require
6 Commission approval notwithstanding Decision No. 67823.

7 41. Answering paragraph 35, Respondent asserts to the extent Complainant is
8 stating a legal conclusion, no response is necessary. To the extent a response is required,
9 Respondent denies the allegation contained in paragraph 35. Respondent asserts that it is
10 an investor owned public service corporation as such is defined by the Arizona
11 Constitution, and that Respondent's provision of water utility service and its obligation to
12 serve under its CC&N are subject to the rules, regulations and orders of the Commission.

13 42. Answering paragraph 36, Respondent denies the allegation contained in
14 paragraph 36. On October 25, 2006 Respondent sent to Complainant a Will Serve Letter
15 and, beginning on the bottom of page 2 of the letter, proposed, with respect to
16 Complainant's claim that he has a viable water source, that "[s]uch an exception to the
17 prohibition on new connections and main extension is consistent with past [Commission]
18 orders and has been the position [Pine Water] has advocated as being in the public interest
19 for several years."

20 43. The remainder of Complainant's filing constitutes a Prayer for Relief to
21 which no response is required.

22 **AFFIRMATIVE DEFENSES**

- 23 1. Complainant fails to state a claim upon which relief can be granted.
- 24 2. Complainant's claims are barred by the doctrines of *res judicata* and
25 estoppel.
- 26

1 3. The Complaint represents a collateral attack on Commission Decision
2 No. 67823.

3 4. Respondent reserves the right to assert all additional affirmative defenses
4 available, as more information becomes known about this case, including all defenses set
5 forth in Rule 8(c), Arizona Rules of Civil Procedure.

6 WHEREFORE, having answered the Complaint, Respondent requests the
7 Commission to order the following:

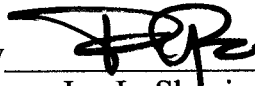
8 A. That the Complaint be dismissed with prejudice and that Complainant takes
9 nothing thereby;

10 B. That nothing be done to delete any portion of Pine Water's current CC&N;
11 and

12 C. For such other and further relief as the Commission deems just and proper.
13

14 RESPECTFULLY SUBMITTED this 12th day of February, 2007.

15 FENNEMORE CRAIG, P.C.

16
17 By 
18 Jay L. Shapiro
19 Patrick J. Black
20 3003 North Central Avenue
21 Suite 2600
22 Phoenix, Arizona 85012
23 Attorneys for Pine Water Company
24
25
26

1 ORIGINAL and thirteen (13) copies of the
2 foregoing filed this 12th day of February, 2007:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 COPIES mailed
8 this 12th day of February, 2007.

9 Brent Weekes
10 1455 W. Heather
11 Gilbert, AZ 85233

12 By: Maria San Jose

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